IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9013 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ABBASI HUSSAMIDDIN TINWALA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9013 of 2002

MR BS PATEL for Petitioner No. 1

MRS RANJAN B PATEL for Petitioner No. 1

Ms MANISHA LAVKUMAR, AGP for Respondent No. 1-2

NOTICE SERVED BY DS for Respondent No. 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 18/11/2002

ORAL JUDGEMENT

Rule. Ms Manisha Lavkumar, learned AGP waives service of Rule for respondent Nos. 1 and 2.

2. Petitioner-Abbasi Hussamiddin Tinwala challenges in this petition under Article 226 of the Constitution the order dated 27.2.2002 passed by the Joint Registrar (Audit) of Co-operative Societies, Gujarat State (Annexure "A") as confirmed by the order dated 19.8.2002 (Annexure "B") passed by the State Government in revision, whereby the petitioner is ordered to be removed from the office of the Director of respondent No. 3-Alvi Co-operative Bank Ltd. at Baroda. The impugned order dated 27.2.2002 has been passed on the ground that the petitioner has suffered disqualification under sub-clauses (i) and (ii) of clause (b) of Section 115C(2) of the Gujarat Co-operative Societies Act, 1971 (hereinafter referred to as "the Act").

3. The gravamen of the challenge raised by the petitioner is that such an order could not have been passed without giving the petitioner an opportunity of being heard as expressly provided by sub-section (4) of Section 115C.

4. On the other hand, Ms Manisha Lavkumar, learned AGP for respondent Nos. 1 and 2 has submitted that the order of the State Government in revision clearly states that the petitioner was afforded opportunity of being heard on 11.10.1999 and 11.1.2002.

5. In rejoinder, it is, however, pointed out that the aforesaid hearings were given to the petitioner when the proceedings under Section 93 of the Act were going on, but the report dated 7.5.2001 at Annexure "D" to the petition under Section 93 of the Act sets out the names of the responsible officers like the Chairman and the Director of the bank, but the petitioner's name does not figure in the said list and, therefore, the respondents were not justified in launching proceedings under Section 115C of the Act against the petitioner.

Thereupon, the learned AGP states that as per the letter dated 10.1.2002 from the General Manager of respondent No. 3-bank, the petitioner was a defaulter vis-a-vis his cash credit account. Reliance is placed on the said letter for defending the impugned order dated 27.2.2002 and it is submitted that as per the provisions of sub-section (3) of Section 115C, once the petitioner was found to be a defaulter, the disqualification was automatic and, therefore also, there is no infirmity in the impugned order.

6. Having heard the learned counsel for the parties,

it appears to the Court that neither the impugned order dated 27.2.2002 at Annexure "A" nor the revisional order dated 19.8.2002 at Annexure "B" refer to any such default as is referred to in the letter dated 10.1.2002 of the General Manager of respondent No. 3-bank. Of course, Annexure "A" merely refers to the provisions of Section 115C(2)(b)(i) & (ii) and the said order does not refer to any transaction in respect of which the petitioner was considered to be a defaulter, but even the revisional order does not refer to the said default in respect of the cash credit account and the only default referred to is non-payment of the amounts due and payable as per the report under Section 93 of the Act. There is considerable substance in the case of the petitioner that the petitioner was not found to be one of the responsible officers as mentioned in the report dated 7.5.2001 at Annexure "D" and, therefore, the impugned orders were not justified with reference to the alleged default under Section 93 of the Act.

Even so, when the case of the bank before the authorities was that the petitioner was a defaulter as per the letter dated 10.1.2002, and since that position is not admitted by the petitioner, the respondent authorities were required to follow the procedure prescribed by sub-section (4) of Section 115C.

7. In this view of the matter, the petition deserves to be allowed only on the short ground that the petitioner was not given any opportunity of being heard before the impugned order dated 27.2.2002 was passed. Even while quashing and setting aside the said order dated 27.2.2002 and the revisional order dated 19.8.2002 at Annexures "A" and "B" respectively, it is clarified that the order dated 27.2.2002 at Annexure "A" shall be treated as a show cause notice under sub-section (4) of Section 115C of the Act and the authorities shall take appropriate decision in accordance with law by 15.2.2003 after considering the reply/evidence, if any, which the petitioner may choose to produce before the authorities in response to the said show cause notice dated 27.2.2002 by 31.12.2002 (because Mr Patel for the petitioner states that the petitioner has gone on Haj Pilgrimage). It is clarified that this Court has not gone into the merits of the controversy between the parties and the matter shall be decided in accordance with law.

Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah, J.)

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